

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,	)	
	)	Case No. 7:18CV615
Plaintiff,	)	
	)	
v.	)	
	)	
GEORGE W. GEARHART, JR.	)	
3430 Woodland Hills Lane S.W.,	)	
Roanoke, VA 24014;	)	
	)	
WYSOR GEARHART,	)	
3430 Woodland Hills Lane S.W.,	)	
Roanoke, VA 24014; and	)	
	)	
SUNTRUST BANK,	)	
1001 Semmes Ave.,	)	
Richmond, VA 23224;	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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**COMPLAINT**

The plaintiff, the United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, has commenced this civil action to collect the Federal tax assessments made against George W. Gearhart, Jr.; to enforce the tax liens of the United States against a real property, which is commonly described as 3430 Woodland Hills Lane S.W., Roanoke, Virginia (the “Subject Real Property”); and to obtain a judicial sale of the Subject Real Property with the proceeds from such sale being distributed according to the relative priorities of the parties’ claims.

### **JURISDICTION & VENUE**

1. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1340 and 1345, as well as 26 U.S.C. §§ 7402 and 7403.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

### **PARTIES**

3. The plaintiff is the United States of America.

4. George W. Gearhart, Jr. is a defendant and resides in Roanoke County, Virginia, which is within this judicial district.

5. Wysor Gearhart is a defendant Bank is joined as a defendant because she has or may claim an interest in the Subject Real Property

6. Suntrust Bank is joined as a defendant because it has or may claim an interest in the Subject Real Property based on a.

### **COUNT I - REDUCE FEDERAL INCOME TAX ASSESSMENTS TO JUDGMENT**

7. The United States incorporates by reference the allegations set forth in paragraphs 1 through 6 above.

8. A delegate of the Secretary of Treasury of the United States made assessments for unpaid Federal income tax (Form 1040) against defendant George W. Gearhart, Jr. on the dates and for the tax periods set forth below:

<u>Tax Period Ending</u>	<u>Type of Tax</u>	<u>Date of Assessment</u>	<u>Assessment</u>	<u>Balance due as of December 3, 2018</u>
12/31/2004	Income	11/13/2006	\$36,372.00	\$37,329.57
12/31/2005	Income	11/24/2014	\$37,526.00	\$90,916.01
12/31/2006	Income	11/24/2014	\$44,476.38	\$103,105.66
12/31/2007	Income	3/16/2015	\$44,159.48	\$95,700.45
12/31/2008	Income	1/12/2015	\$31,718.38	\$64,061.41
12/31/2009	Income	1/12/2015	\$18,845.33	\$37,308.45
12/31/2010	Income	2/23/2015	\$19,888.00	\$38,040.57
12/31/2011	Income	3/16/2015	\$21,044.52	\$38,861.79
12/31/2012	Income	4/27/2015	\$10,716.00	\$19,190.34
12/31/2013	Income	4/27/2015	\$19,489.00	\$32,987.93
12/31/2014	Income	6/08/2015	\$11,642.00	\$13,576.74
12/31/2016	Income	1/01/2018	\$65,146.00	\$56,01.71
<b>TOTAL</b>				<b>\$571,078.92</b>

9. Notice and demand for payment of the tax assessments described in paragraph 8 was given to defendant George W. Gearhart, Jr.

10. Defendant George W. Gearhart, Jr. has failed to pay the United States the full amount owed as a result of the tax assessments described in paragraph 8.

11. Statutory additions to tax and interest have accrued and will continue to accrue on the tax assessments described in paragraph 8.

12. By reason of the foregoing tax assessments, defendant George W. Gearhart, Jr. is indebted to the United States for unpaid Federal income tax, interest and penalties in the total amount of \$571,078.92 as of December 3, 2018, plus interest and costs that have accrued after that date and will continue to accrue according to law.

**WHEREFORE**, the United States of America respectfully prays for judgment in its fair and equitable determination as follows:

- (a) That the Court render judgment in favor of the United States against George W. Gearhart, Jr. in the amount of \$571,078.92 as of December 3, 2018 together with statutory additions and interest according to law; and
- (b) That the Court grants the United States such other relief as it deems just and proper.

## **COUNT II - FORECLOSURE OF THE FEDERAL TAX LIENS**

13. The United States incorporates by reference the allegations set forth in paragraphs 1 through 12 above.

14. By reason of the assessments made against defendant George W. Gearhart, Jr. for unpaid Federal income taxes described in paragraph 8, Federal tax liens arose on the dates of the assessments and, pursuant to 26 U.S.C. §§ 6321 and 6323, attached to all property and rights to property owned or thereafter acquired by defendant George W. Gearhart, Jr..

15. Defendant George W. Gearhart, Jr., together with his then-wife defendant Wysor Gearhart, acquired the real property located at 3430 Woodland Hills Lane S.W., Roanoke, Virginia from C.W. Francis & Son, Inc, on April 18, 1984 as evidenced by a deed, which is attached hereto as Exhibit A. The Subject Real Property is more particularly described as on page 1 of Exhibit A.

16. The Internal Revenue Service filed notices of Federal tax liens with the Office of the tax Clerk in Roanoke, Virginia against defendant George W. Gearhart, Jr. reflecting the assessments as set forth in paragraph 8, above, on the following dates :

<u>Tax Period</u> <u>Ending</u>	<u>Notice of Lien Filed</u>
12/31/2004	5/08/2018 (refiled)
12/31/2005	3/10/2015
12/31/2006	4/21/2015
12/31/2007	4/15/2015
12/31/2008	3/10/2015
12/31/2009	3/10/2015
12/31/2010	3/24/2015
12/31/2011	4/15/2015
12/31/2012	6/02/2015
12/31/2013	6/02/2015
12/31/2014	7/13/2015
12/31/2016	2/23/2018

17. The United States has valid and subsisting tax liens that encumber defendant George W. Gearhart, Jr.'s interest in the Subject Real Property. These Federal tax liens should be ordered to be foreclosed, the Subject Real Property sold, with the proceeds of such sale be distributed to the United States to satisfy the federal tax liens and the other parties according to the law.

**WHEREFORE**, the United States of America respectfully prays for judgment in its fair and equitable determination as follows:

- (c) That the Court adjudge and decree that the United States has valid and subsisting tax liens that attach to and encumber defendant George W. Gearhart, Jr.'s interest in the Subject Real Property as described in paragraph 15; and that the Subject Real Property be sold according to law, free and clear of any right, title, lien, claim or interest of any of the parties herein;
- (d) That the Court adjudge, determine, and decree that the proceeds of the sale of the Subject Real Property be distributed in a manner consistent with the relative priorities of the parties' claims according to the law.
- (d) That the Court grants the United States such other and further relief as it deems just and proper.

Dated: December 11, 2018

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

/s/ Kunal J. Choksi  
KUNAL J. CHOKSI  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 227  
Washington, DC 20044  
(P) 202-305-3136  
Kunal.j.choksi@usdoj.gov  
*Counsel for the United States of America*

2818

THIS DEED, made and entered into this 18th day of April, 1984, by and between C. W. Francis & Son, Inc., a Virginia corporation, Grantor, and G. William Gearhart, Jr. and Wysor W. Gearhart, husband and wife, Grantees.

W I T N E S S E T H

THAT FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid by the Grantees to Grantor, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby grant, with Covenants of General Warranty of Title and English Covenants of Title, unto Grantees, as tenants by the entirety, with the right of survivorship as at common law and as provided for under the law and statutes of Virginia, all of the following lot or parcel of land lying and being in the City of Roanoke, State of Virginia, and more particularly described as follows:

Lot 13, Block 1, as shown on the Plat of Peakwood Hills dated January 11, 1984, made by Buford T. Lumsden & Associates, P.C., Engineers & Surveyors, and recorded in Map Book 1, pages 353 and 354, in the Clerk's Office of the Circuit Court for the City of Roanoke, Virginia.

BEING part of the property conveyed by deed dated November 30, 1983 from Betty F. Trinkle and James L. Trinkle, her husband, to C. W. Francis & Son, Inc., and recorded in the Clerk's Office of the Circuit Court for the City of Roanoke, Virginia, in Deed Book 1497, page 1591, and re-recorded in the aforesaid Clerk's Office in Deed Book 1498, page 1019.

This conveyance is made subject, however, to all easements, restrictions and covenants of record that affect the property just hereinabove described.

WITNESS the following signatures and seals:

C. W. FRANCIS & SON, INC.

By James L. Trinkle (SEAL)  
its President

STATE OF VIRGINIA

CITY OF ROANOKE, to-wit:

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of April, 1984, by James L. Trinkle, President for C. W. Francis & Son, Inc.



James L. Trinkle  
Notary Public

My Commission expires My Commission Expires Sept. 14, 1984.

	State Tax:	City Tax:	Clerk's Fee:	Transfer:	Total:
58-54	\$ <u>86.25</u>	\$ <u>28.75</u>			
58-54.1	\$ <u>28.75</u>	\$ <u>28.75</u>	\$ <u>10.00</u>	\$ <u>1.00</u>	\$ <u>183.50</u>

In the Clerk's Office of the Circuit Court of the City of Roanoke, Virginia, this instrument with the Certificate \_\_\_\_\_ of Acknowledgment thereto annexed is admitted to Record on

April 20, 1984, at 4:13 o'clock, P. M.

The taxes imposed by Section 58-54 and Section 58-54.1, Code of Virginia, 1950, as amended, have been paid.

Teste: PATSY TESTERMAN, Clerk

By Susanna Greer Deputy Clerk.



**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kunal J. Choksi, Department of Justice, Tax Division, P.O. Box 227,  
Washington, DC 20044; (202) 307-3136**DEFENDANTS**

George W. Gearhart, Wysor Gearhart, Suntrust Bank

County of Residence of First Listed Defendant **Roanoke**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**26 U.S.C. 7401, 7403**

Brief description of cause:

Suit to reduce federal income tax assessments to judgment and foreclose on tax lien

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**  
571,078.92CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

12/11/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Kunal J. Choksi

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_